

APPENDIX C

DD Form 458, Charge Sheet

See AR 600-200, Table 1-1, for the proper grade designations.

More than one entry may be shown for this block; if so, show all types.

If terminated, show date imposed and terminated.

Do not include any special pay such as that for proficiency, hazard, or performance.

CHARGE SHEET

1. NAME OF ACCUSED (Last, First, MI) James, Reuben J.		2. SSN 111-11-1111		3. GRADE OR RANK PFC	4. PAY GRADE E-3
5. UNIT OR ORGANIZATION Co A, 1st Inf Bde, Fort Blank, MO				6. CURRENT SERVICE	
7. PAY PER MONTH				8. INITIAL DATE 9. TERM	
a. BASIC \$500	b. SEA/FOREIGN DUTY None	c. TOTAL \$500		1 April 1983	3 years
3. NATURE OF RESTRAINT OF ACCUSED Restriction				9. DATE(S) IMPOSED 1 August 1985	

Does not apply in CONUS.

List every essential element of the offense charged.

10. CHARGE I VIOLATION OF THE UCMJ, ARTICLE 86

SPECIFICATION In that Private First Class Reuben J. James, US Army, Company A, 1st Battalion, 1st Infantry Brigade, Fort Blank, Missouri, on active duty, did, on or about 15 July 1985, without authority, absent himself from his unit, to wit: Company A, 1st Battalion, 1st Infantry Brigade, located at Fort Blank, Missouri, and did remain so absent until on or about 30 July 1985.

Do not show the social security number of the accused in the specification.

Charge II: Violation of the UCMJ, Article 112a

Specification 1: In that Private First Class Reubin J. James, US Army, Company A, 1st Battalion, 1st Infantry Brigade, Fort Blank, Missouri, on active duty, did at Fort Blank, Missouri, on or about 12 July 1985, wrongfully possess 10 grams of marijuana.

Specification 2: In that Private First Class Reuben J. James, US Army, Company A, 1st Battalion, 1st Infantry Brigade, Fort Blank, Missouri, on active duty, did at Fort Blank, Missouri, on or about 14 July 1985, wrongfully possess 8 grams of marijuana.

The accuser may be any person subject to the Code, but the accuser cannot refer those charges to a general or special court-martial.

To avoid charging an accused with multiple offenses for what is really a single offense, consult legal counsel before drafting charges. See RCM 307(c) (4), MCM.

11a. NAME OF ACCUSER (Last, First, MI) Richards, Jonathan E.		11b. GRADE Captain		11c. ORGANIZATION OF ACCUSER Co A, 1st Bn, 1st Inf Bde	
d. SIGNATURE OF ACCUSER <i>Jonathan E. Richards</i>				e. DATE 1 Aug 85	
<p>AFFIDAVIT Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this <u>1st</u> day of <u>August</u>, 19<u>85</u>, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>Will M. Wilson</p> <p style="text-align: center;"><small>Typed Name of Officer</small></p> <p>Captain</p> <p style="text-align: center;"><small>Grade</small></p> <p><i>Will M. Wilson</i></p> <p style="text-align: center;"><small>Signature</small></p> </div> <div style="width: 45%;"> <p>1st Bn, 1st Inf Bde</p> <p style="text-align: center;"><small>Organization of Officer</small></p> <p>Adjutant</p> <p style="text-align: center;"><small>Official Capacity to Administer Oath (See RCM 307(b) - must be commissioned officer)</small></p> </div> </div>					

Charges must be sworn in all cases. No accused may be tried on unsworn charges over his objection.

Only a commissioned officer may swear the accuser to the charges.

DD FORM 458
84 AUG

EDITION OF OCT 69 IS OBSOLETE

Refer to RCM 307, MCM, for guidance in preparing a charge sheet. All blocks must carry an entry.

The time entry here is extremely important; it is used as the time element in the Statute of Limitation, Article 43, UCMJ.

12.		
On <u>2 August</u> , 19 <u>85</u> , the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me (See R.C.M. 308 (a)) (See R.C.M. 308 if notification cannot be made.)		
Jonathan E. Richards <small>Typed Name of Immediate Commander</small>		Co A, 1st Bn, 1st Inf Bde <small>Organization of Immediate Commander</small>
Captain		
<u>Jonathan E. Richards</u> <small>Signature</small>		
IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY		
13.		
The sworn charges were received at <u>1100</u> hours, <u>2 August</u> , 19 <u>85</u> , at <u>1st Bn, 1st Inf Bde</u> <small>Designation of Command or</small>		
<small>Officer Exercising Summary Court Martial Jurisdiction (See R.C.M. 403)</small>		
FOR THE <u>COMMANDER</u>		
Will M. Wilson <small>Typed Name of Officer</small>		Adjutant <small>Official Capacity of Officer Signing</small>
Captain <small>Grade</small>		
<u>Will M. Wilson</u> <small>Signature</small>		
V. REFERRAL SERVICE OF CHARGES		
14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY	b. PLACE	c. DATE
1st Infantry Brigade	Fort Blank, Missouri	7 August 1985
Referred for trial to the <u>special</u> court-martial convened by <u>CMCO number 12</u> dated <u>1 August</u> , 19 <u>85</u> , subject to the following instructions: <u>None</u>		
By _____ of _____ <small>Command or Order</small>		
Carl E. Nevins <small>Typed Name of Officer</small>		Commander, 1st Inf Brigade <small>Official Capacity of Officer Signing</small>
Colonel <small>Grade</small>		
<u>Carl E. Nevins</u> <small>Signature</small>		
15.		
On <u>8 August</u> , 19 <u>85</u> , I (caused to be) served a copy hereof on <u>(caused to be)</u> the above named accused		
Hamilton Burger <small>Typed Name of Trial Counsel</small>		Captain, JAGC <small>Grade or Rank of Trial Counsel</small>
<u>Hamilton Burger</u> <small>Signature</small>		
FOOTNOTES 1 - When an appropriate commander signs personally, inapplicable words are stricken. 2 - See R.C.M. 601(e) concerning instructions. If none, so state		

If at all possible, the commander should make this notification personally.

If the charges are recommended for a GCM, then do not go below this block. Notify your SJA as quickly as possible of the recommended level of disposition.

List the amending CMCOs in numerical sequence. All must be listed.

If the rank of the convening authority is colonel or below, use the word order. If the rank is BG or higher and if the convening authority does not personally sign, use the word command.

The appointed trial counsel has the responsibility for serving charges. See RCM 602, MCM, for the applicable time limitations.

All changes, corrections, additions, and deletions must be initialed by the person who makes them.

PERSONAL DATA

The first section of the charge sheet contains personal information concerning the accused. This information is generally found in the personnel file of the accused. During the preliminary investigation, you should have reviewed the personnel file before deciding the disposition of the case. The accused's grade or rank is the military title (PFC in the sample), and the pay grade is the numeric designation (E3). The initial date of the accused's current service is the date of his latest enlistment.

WITNESSES

Each witness must be contacted to determine availability during the next 90 days. You should request that an administrative hold be placed on the witness. Failure to take this action may result in the loss of an essential witness who will not return to testify or who will return only at great expense to the government.

RESTRAINT

Block 8 should indicate the nature of restraint of the accused, listing all types of restraint imposed. Block 9 specifies the duration of and any changes in the restraint, for example—

- Restriction, 1-10 August 1989.
- Pretrial Confinement, 11 August 1989.

CHARGES AND SPECIFICATIONS

The charge merely indicates the article of the UCMJ that was violated. The specification under the charge states the facts and circumstances that constitute a violation of that article.

A single charge may include more than one specification; if it does, number them with arabic numerals. The specification must be written so that it clearly advises the accused of the date, time, place, elements, and circumstances of the alleged offense. A specification which fails to allege every essential element of the offense charged is fatally defective. If a model specification is not available for a particular offense, do not attempt to create one—see your SJA.

Elements Of The Offense

Part IV of the MCM discusses the punitive articles of the UCMJ. These punitive articles are the bases for charges and specifications. Subparagraph b of each paragraph in Part IV outlines the elements of the offense which are important both in recognizing criminal conduct and in drafting a clear, complete specification. A carefully prepared specification will include each of these elements.

Model Specifications

When drafting specifications, use the model fill-in-the-blank specifications in MCM, Part IV. These specifications are legally correct. You should address any questions regarding proper wording to the SJA office. The paragraphs in Part IV also outline other information useful in drafting specifications.

Legal Advice

Do not alter the words in a model specification without advice from the SJA office. Seek legal advice regarding any question on the selection or drafting of a specification. The designated trial counsel for the unit or the military justice division chief, who is the principal assistant of the SJA in all matters pertaining to the administration of military justice, should provide the legal advice.

PREFERRAL OF CHARGES

Usually you sign the charge sheet as the accuser; however, any person subject to the UCMJ maybe an accuser. A superior authority may not order anyone to prefer charges to which he cannot truthfully make the required oath. The signing of the charge sheet by the accuser must be done in the presence of a commissioned officer authorized to administer oaths. (See UCMJ, Article 136.) The accuser must take the oath described on the bottom of the front page of the charge sheet. This act is called the referral of charges.

NOTIFICATION TO THE ACCUSED

After the charges have been preferred, you or your representative must inform the accused of the charges and specifications and who preferred

the charges. The notification should normally occur on the same day as the preferral of charges. You then complete the certificate in block 12 of the charge sheet. The accused must be informed of the charges by this formal act. You may have previously told the accused that you intended to bring charges or that you were investigating possible charges; merely having done so does not satisfy this requirement. Later, after the charges have been referred to trial, the trial counsel will give a copy of the charge sheet to the accused and sign the certificate (block 15).

RECEIPT AND REFERRAL OF CHARGES

Upon receipt of all necessary copies of the charge sheet and allied papers, the summary court-martial convening authority or a representative will sign the receipt of charges in block 13. The appropriate court-martial convening authority will refer the charges to a specific court-martial for trial and complete Section V of the charge sheet.

TRANSMITTAL OF CHARGES

As the company commander, you prepare and forward other documents with the copies of the charge sheet. These should be hand-carried to the commander exercising summary court-martial jurisdiction. (See MCM, R.C.M. 401(c)(2).)

Letter Of Transmittal

Use a letter of transmittal to forward the charge sheet and allied papers to the court-martial convening authority. The letter is usually a local form containing information about the accused and your recommendation for disposition of the charges. You must personally sign the letter of transmittal and attach one copy to each set of the charge sheet and allied papers. When recommending disposition of the charges, consider the nature of the offense, the personal history of the accused, and whether the accused should be eliminated from the service.

Keep in mind that charges against an accused should be tried by the lowest court with power to adjudge an appropriate and adequate punishment.

Allied Papers

INVESTIGATIVE REPORTS

Forward all military police or CID reports of investigation related to the offense. If these investigative reports are not completed when you are ready to forward the charges, you should forward the charges with a statement that the reports will follow when they become available. You may forward initial and interim reports you receive with the charge sheet. Under no circumstances should you delay forwarding charges until completion of the final MP or CID reports.

WITNESS STATEMENTS

Available witness statements forwarded with the charge sheet may be sworn or unsworn. You may include summaries of expected testimony. While in most cases attaching written statements from all available witnesses is best, delaying forwarding charges to obtain them is not necessary. You may attach handwritten statements to the charges if typing causes an unnecessary delay.

DOCUMENTARY EVIDENCE

To safeguard documentary evidence, do not forward originals with the charge sheet; copies are sufficient. For example, if the case is based on a forged check, forwarding the original would risk loss in transmittal.

OTHER RECORDS

Include any records of the accused's previous convictions with the documentation, as well as personal evaluation sheets. Personal evaluations are often recorded on local forms and include information about the accused's military record and your evaluation of the accused's conduct and efficiency.